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APPLICANT: James F. Allsup
SERIAL NO.: 09/629,323
FILED: July 31, 2000
EXAMINER: Dinh X. Nguyen
DOCKET NO.: 7554
GROUP ART UNIT: 3626
FOR: Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Plan

Affidavit of James F. Allsup Under 37 C.F.R. §1.132

James F. Allsup, being duly sworn, does hereby depose and say as follows:

1. I am the inventor of the Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Plan described and claimed in application Serial No. 09/629,323 filed July 31, 2000. I own all rights, title and interest in the application and invention and have not assigned any rights to another party.

2. I am the founder, owner and Chief Executive Officer of Allsup, Inc. Allsup, Inc. ("Allsup") is the exclusive user of the Long Term Disability Overpayment Recovery Service With Post Award Service And Savings Plan described and claimed in application Serial No. 09/629,323.

3. Prior to founding Allsup, I was employed by the Social Security Administration ("SSA") from 1977 to 1982 as a claims and field representative.

4. Allsup was established in 1984. The original business purpose of the company was to utilize my experience working with the SSA to represent

individuals in their pursuit of Social Security Disability Insurance benefits ("SSDI") from the SSA.

5. Initially, Allsup's services focused primarily on Long-Term Disability ("LTD") insurance carriers and self-insured employers, who insured or extended LTD benefits to employees. I was aware, generally, that most LTD benefit plans allow the plan to reduce the amount of LTD benefits paid to a disabled individual, by the amount of SSDI the individual receives. It is to the benefit of the plan (and its insurer and sponsor) to pay for Allsup's services, so that the individual could obtain SSDI and the plan could reduce the amount of its LTD benefit payments going forward.

6. Although Allsup continued to represent uninsured individuals (i.e., those not having LTD benefits) in their pursuit of SSDI, it quickly began to receive increased referrals from LTD carriers and self-insured employers that desired to reduce their LTD obligations to disabled individuals by providing them Allsup's representation services. As my experience with these entities, their plans and referred individuals developed, I became aware that not only did the terms of the LTD benefit plans typically allow for the reduction of the ongoing LTD benefit, but they also required the repayment of past LTD benefits if and when SSDI was awarded by SSA retroactively ("overpayment").

7. As the number of referrals from LTD carriers and self-insured employers increased, Allsup began to take certain initial steps to address this overpayment issue. In this regard, it provided reminders to the individual that if and when SSDI was awarded, the individual would be obligated to repay any

overpayment to the LTD carrier or self-insured employer. Subsequently, Allsup included this information both verbally and in writing. This activity began in approximately 1986.

8. Initially, Allsup took no action to recover the overpayment. Allsup simply informed the individual that the LTD carrier or self-insured employer would contact the individual directly and would provide them with the exact amount to be repaid. This process included informing the LTD carrier or self-insured employer of the award, the date the individual became entitled to SSDI benefits and of the specific SSDI benefit amount, so that the LTD carrier or self-insured employer could calculate the overpayment amount and proceed with its own recovery efforts from the individual. This type of recovery effort amounted to a "back-end" approach by the LTD carrier or self-insured employer to recovering overpayments (i.e., the principal efforts and actions to recover the overpayment occurred only after the award of SSDI and the payment of retroactive benefits, and was conducted primarily by the LTD carrier or self-insured employer).

9. In my opinion, the information included in the SSDC (29 October 1993) reference cited by the Examiner does not pertain to an actual SSDC recovery service. It is not sufficient to enable SSDC or anyone else skilled in the art to recover LTD overpayments. It certainly does not teach or suggest the steps of my method. It also is my opinion, based upon my knowledge and belief, that the "back-end" type of information assistance only activity I described in paragraph 8, is the type of service SSDC was engaged in during October, 1993, when I first became aware of the SSDC brochure. It is my opinion that this "back-

end" type of information assistance only activity (i.e., simple verbal and written reminders to the individual as to their repayment obligation by the vendor representing the individual in their pursuit of SSDI and informing the carrier of the award) is the subject matter of the statement "coordination of overpayment recoveries resulting from SSDIB awards", contained in the SSDC brochure.

10. As Allsup continued to represent individuals referred by LTD carriers and self-insured employers, I became increasingly aware of the limited success such entities were having in effecting their own recoveries of overpayments. (See, paragraph 36, below). In my opinion this is due in part, and continues to be due in part, to the individual's perception of the LTD carrier or self-insured employer as an adversary.

11. Another problem created by the old way of recovering overpayments is that the process involved in the "back-end" LTD carrier/self-insured employer recovery approach described in paragraph 8, afforded significant time for the disabled individual to take "mental ownership" of the retroactive SSDI payment (i.e., as time passes, the financial and other pressures confronting the disabled individual cause the individual to spend the money received, for a purpose other than the repayment of the overpayment).

12. Due to the general adversarial relationship between the disabled individual and the LTD carrier/self-insured employer, and the fact that the disabled individual often spent the SSDI award rather than paying back their LTD carrier or self-insured employer, there was a long felt need in the industry for a process for recovering the overpayment from the individual which avoided these

problems, and increased the amount of the overpayment recovery and decreased the length of time it takes to collect the overpayment.

13. In contrast to the feelings about the LTD carrier/self-insured employer, I determined that the disabled individual generally views Allsup favorably, because Allsup has represented the individual in the typically complicated and lengthy application process for SSDI, and because Allsup had obtained an award of SSDI for the individual. I recognized the value of Allsup's relationship with the individual as well as the need to expedite the recovery of the overpayment, and thus began to explore the possibility of Allsup proceeding to take a greater role in the recovery of overpayments so as to address the long felt need in the industry.

14. Beginning in approximately 1991, Allsup employed for the first time an actual overpayment recovery service. I explored various alternatives to effect the recovery of overpayments that were not practical at the time, and ended up employing a "manual" process for expediting overpayment recovery. Essentially, that "manual" process began the overpayment recovery process before the overpayment was created. While conducting the initial SSDI application interview with the individual, the Allsup representative informed the individual that an overpayment may be created if Allsup was successful in obtaining an SSDI award. However, unlike the Allsup information assistance only activity I described in paragraph 8, the individual also was informed that Allsup could help them meet their repayment obligation, by having the individual forward their overpayment to Allsup upon receipt of the retroactive SSDI payment. Allsup also

informed the individual that if the he or she failed to repay the overpayment, it could result in a suspension of some or all of their LTD benefits.

15. In general, under the Allsup manual recovery system, the individual's SSDI application was submitted for processing and monitored until Allsup obtained the SSDI award. Upon award, Allsup notified both the individual and the LTD carrier or self-insured employer of the award. Allsup provided the individual with benefit information, which included the amount of the retroactive payment they would receive. Allsup then provided the same benefit information to the LTD carrier or self-insured employer so that they could compute the overpayment amount. Once the amount had been computed and forwarded back to Allsup, Allsup notified the individual of the overpayment amount. The individual then forwarded a check to Allsup for the overpayment amount. The check was made out to the carrier or the self-insured employer. Allsup in turn forwarded the payment on to the LTD carrier or self-insured employer or deposited the money in the entity's account established on its behalf by Allsup. Allsup still employs a manual version of overpayment recovery as a back up to the electronic system or, for use in some limited cases, where its client company or the SSDI recipient opt out of the automated recovery system.

16. Although the Allsup manual process for recovering overpayments was refined by modifying internal procedures in an attempt to improve recovery somewhat, the process still suffered from the same basic problems known to the industry. Most notable is that it still allowed the individual to get possession of

the overpayment and refuse payment to the LTD carrier or self-insured employer or spend the money.

17. I determined that I could solve a problem long known to the industry if I could develop a system that allowed an intermediary, such as Allsup, to recover the overpayment before the individual could spend the money or otherwise claim ownership of it. I also determined that the best possible way to do this would be through an electronic recovery from direct deposited SSDI benefits. In 1998 I began work on this type of electronic recovery, but encountered a number of obstacles.

18. Prior to initiating the current electronic process that is the subject of my patent application, it was recognized in the industry that applicable Federal law prevents the assignment of SSDI benefits by the individual. This long-standing rule is designed to protect the individual from overreaching by creditors and others. Section 207 of the Social Security Act (42 U.S.C. 407) states in pertinent part "(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." This provision of the Social Security Act has been interpreted very broadly by SSA and effectively bars the use of normal collection efforts.

19. Through my efforts in 1998, I determined that The Debt Collection Improvement Act of 1996 requires that most Federal payments be made by

electronic funds transfer effective after January 2, 1999. I also determined that the SSA eventually modified its Program Operations Manual (POMS) to reflect this change to provide that direct deposit payments of SSDI may be made to a checking or other deposit account, as long as the disabled individual has an ownership interest in the account.

20. My next step was to determine if I could in some manner employ direct deposit of SSDI benefits in a system to secure recovery of overpayment amounts. I conceived the idea of having a preauthorized withdrawal of funds from a direct payment account after the SSDI benefit was deposited and to use an electronic funds transfer to effect the withdrawal. A process to recover overpayments based upon a preauthorized withdrawal of a predetermined amount immediately following the direct deposit of SSDI benefits to the disabled individual's account had never before been used in this industry.

21. In developing my invention I was required to consider, research and effectively deal with a number of issues, the first of which was that I had to create an appropriate form to address the practicalities of effecting such recoveries in view of the procedures and inherent delays of the SSA application, award and payment process, as well as the inherent tension between the individual and the LTD carrier or self-insured employer.

22. I determined that, as a result of applicable Federal regulations (notably Regulation E of the Federal Reserve Board) and operating rules of the National Automated Clearing House Association ("NATCHA"), an ACH debit authorization (e.g., a preauthorized withdrawal), must clearly and conspicuously

state the terms of the authorization in order that the beneficiary understands the authorization to which he or she is agreeing. In particular, I determined that any such form must set forth (a) the amount of the future withdrawal, (b) the date on or after which the amount will be withdrawn, and (c) the right to cancel the authority and the manner by which it may be done. Further, the beneficiary must receive a copy of the authorization.

23. Another obstacle that had to be overcome in developing the process of my invention was that the exact amount and timing of the future withdrawal could not be determined at the time the claimant agrees to participate in the overpayment recovery program and a preauthorized withdrawal agreement is signed. I needed to develop a way to meet these requirements since there was no other procedure of this type utilized in the industry. I created a solution to the problem as follows:

- a. As to the amount, I determined that we could obtain from SSA a Personalized Earnings and Benefits Estimate Statement ("PEBES"), which details, among other things, SSA's estimate as to the amount of SSDI benefits an individual may be entitled to receive.
- b. I determined that by use of the PEBES, I could include in a preauthorization form a formula that would allow the individual to calculate (and thus determine/be aware of) the amount that would be withdrawn.

- c. As to the date on which the withdrawal would occur, I addressed this requirement by identifying the same to occur on or after the date that the retroactive SSDI payment is deposited.
- d. Even more unique, however, was the fact that while the form I developed is called a preauthorized withdrawal form, the form itself provides for only one withdrawal, thereby excluding it from the definition of "preauthorized withdrawal" under Regulation E.

24. The form I created to allow me to operate my claimed system is not standard by any means. Rather, it is peculiar to the issues involved in the award and payment of SSDI benefits by SSA, and the ability of entities to recover any overpayment, while at the same time complying with legal requirements for assignment of rights, direct deposit of a government benefit, and electronic transfer of funds.

25. During the course of development of my automated or "electronic" overpayment recovery process, I also became aware of Section 205.10(e)(2) of Regulation E, which provides, in pertinent part, that no person may require a consumer to establish an account for receipt of direct deposits with a particular banking institution as a condition of receipt of a government benefit. Although it initially appeared that this regulation presented a severe obstacle to my new method of recovery, I determined I could effect ACH transactions utilizing any account at any financial institution to avoid this potential barrier to effecting an "electronic" overpayment recovery process. Thus, through the inventive process,

I was able to develop a system that complies with Section 205.10(e)(2) of Regulation E.

26. After I developed a preauthorized withdrawal form that enabled me to work my invention while still complying with applicable laws and regulations, I set about incorporating its use in Allsup's overall overpayment recovery process. I developed an electronic process that differs from a manual recovery method in several regards, as follows:

- a. When the individual agrees to allow Allsup to assist them in meeting the repayment obligation, the individual also agrees to sign Allsup's preauthorized withdrawal form at the same time that they sign their SSDI application forms. The preauthorized withdrawal form authorizes Allsup to transfer the individual's overpayment from their bank account, automatically or electronically, at the time the retroactive SSDI is deposited.
- b. At the time that the individual signs the preauthorized withdrawal form, the client, through Allsup, elects direct deposit of their SSDI and Allsup submits the Social Security claim for processing.
- c. The individual's signed preauthorized withdrawal form is maintained in their claims file along with the necessary bank account information as processing begins.
- d. When Allsup first learns that it has obtained a SSDI award for the individual, it requests a "Fact Query" from SSA. This query contains all relevant SSDI information, such as the retroactive award, along with

the "DRD" or debit run date, as set out at page 22 of my patent application. The DRD provides the date that the Treasury Department has authorized payment, which allows Allsup to determine, generally, that the funds will be direct deposited into the individual's bank account 7 to 10 days from this date.

27. The ability of my invention to allow us to use the Fact Query is very important to my "electronic" overpayment recovery process. I was the first to recognize that this element allows us to be notified of the retroactive award amount and to be aware of the time that sufficient funds were available so that we would not have to engage in a daily inquiry of the financial institution, which would be both cumbersome and would eventually result in an adverse response from the financial institution involved. Without the Fact Query, it would almost be impossible to operate my system.

28. With my invention, as long as we receive the overpayment calculation from the LTD carrier or self-insured employer by the estimated date of deposit, we can then contact the individual's bank to verify sufficient funds for the withdrawal of the overpayment. Once sufficient funds have been verified, we then can proceed to effect the transfer via ACH software. Upon receipt of the overpaid funds in the Allsup account, it then forwards them on to the referring LTD carrier or self-insured employer.

29. For the first time in the industry my invention allows for a withdrawal or "sweep" of the calculated overpayment amount virtually right after SSA makes a direct deposit to the account. My invention has the tremendous advantage of

allowing (1) the individual to authorize this sweep not only before the SSDI funds have been deposited, but also before the SSDI claim has even been submitted, and (2) for Allsup to recover the overpayment amount authorized before the money is spent or before the individual reconsiders.

30. My system effectively utilizes the valuable relationship and goodwill developed between Allsup and the individual created as a result of the successful SSDI representation process. The new method provides a convenient and easy method for the individual to comply with his or her contractual obligation to repay the overpayment.

31. There is nothing obvious about my claimed process. There was no process or system known to the industry that functions like my new overpayment recovery system or even suggests my new overpayment recovery system. As I have set out above, I was the first person to develop a system that allows for preauthorization to obtain the overpayment and for the electronic sweep of a predetermined amount of overpayment from a direct deposit account on a predetermined date. It took years of research and development to create a system and supporting software, forms and procedures that comport with the applicable rules and regulations. The claimed process has met a long-felt need in the industry and has been quite successful commercially.

32. In late 1999, Allsup began to implement its new "electronic" overpayment recovery process with certain of its client companies. As a result, over the past several years, Allsup has experienced an increase in its rate of recovery of overpayments, as well as a reduction in the time it takes to effect

such recoveries. Of particular note is the decrease in the number of days it takes to effect recoveries, even in comparison to its "manual" overpayment recovery method.

33. The following is a chart indicating the increase in recovery percentages and dollars recovered for all overpayment recovery service clients that we have experienced over the full three-year period after commercial introduction of the process in November, 1999:

TOTAL OVERPAYMENT RECOVERY SERVICE
(Recovery Percentages)

| Year | Number of Recoveries Attempted | Number of Recoveries Made | % of Number Recovered | Dollar Amount of Recoveries Attempted | Dollar Amount of Recoveries Made | % of Dollars Recovered |
|------|--------------------------------|---------------------------|-----------------------|---------------------------------------|----------------------------------|------------------------|
| 1999 | 324 | 269 | 83.02% | \$3,844,244 | \$3,220,635 | 83.78% |
| 2000 | 1334 | 1160 | 86.96% | \$16,389,430 | \$13,774,984 | 84.05% |
| 2001 | 1869 | 1694 | 90.64% | \$22,498,021 | \$19,847,580 | 88.22% |
| 2002 | 2634 | 2340 | 88.84% | \$33,954,246 | \$28,983,975 | 85.35% |

34. As shown by the chart above, in the second full year that Allsup employed the method of my invention the total dollar amount of recoveries made increased by over \$6 million. Between 2001 and 2002, the dollar amount of recoveries increased by over \$9,000,000.

35. The average monthly dollar amount of recoveries for 2002 was \$2,415,533 and percentage of dollars recovered is 85.35%.

36. Based upon statements made by representatives of certain significant LTD carriers and/or information provided to Allsup by the same, I believe that, on average, such carriers were able to recover only 33% of overpayments within 60 days and only 75% of overpayments within 60 months, without the use of Allsup's present "electronic" method.

37. The following chart summarizes the decrease in the number of days until overpayment recovery after initiation of the overpayment recovery employing the system of the present invention:

OVERPAYMENT RECOVERY SERVICE
(Average Days to Recovery)

| Year | Manual Method Clients | | Electronic Method Clients | | Weighted Average Days to Recovery |
|------|---------------------------|--------------------------|---------------------------|--------------------------|-----------------------------------|
| | Number of Recoveries Made | Average Days to Recovery | Number of Recoveries Made | Average Days to Recovery | |
| 1999 | 197 | 23.1 | 72 | 9.7 | 19.5 |
| 2000 | 154 | 22.4 | 1006 | 9.6 | 11.3 |
| 2001 | 167 | 24.7 | 1527 | 6.8 | 8.6 |
| 2002 | 168 | 31.1 | 2172 | 11.4 | 12.8 |

38. The following chart shows a break down of the dollar amount of recoveries made, comparing the amounts collected when the represented individual repaid the overpaid amount directly (Manual Method Clients) vs. the new electronic overpayment recovery system (Electronic Method Clients).

| Year | Dollar Amount Of Recoveries Made | | |
|-------|----------------------------------|---------------------------|--|
| | Manual Method Clients | Electronic Method Clients | Total Dollar Amount of Recoveries Made |
| 1999 | \$2,271,215 | \$949,420 | \$3,220,635 |
| 2000 | \$1,757,748 | \$12,017,236 | \$13,774,984 |
| 2001 | \$2,074,304 | \$17,773,276 | \$19,847,580 |
| 2002 | \$1,934,180 | \$27,049,795 | \$28,983,975 |
| Total | \$8,037,447 | \$55,789,727 | \$65,827,174 |

The chart above illustrates the tremendous commercial success my invention has met over that last three years. The total amount of recoveries

made per year from 1999 to 2002 grew by over \$25 million. For 2002, it is significant that over 93% of the total dollars recovered were electronic overpayment recovery system clients. Only approximately 7% of the recoveries were made through manual method clients. I believe this demonstrates the superiority of my invention over any method heretofore known for effecting recovery of the overpayment.

39. Allsup continues to receive significant and growing interest from LTD carriers and self-insured employers with respect to its present "electronic" overpayment recovery service. To date, it has been engaged by 36 companies to perform overpayment recovery services including the electronic overpayment recovery with a manual back up. We anticipate that an additional three to six companies will engage it for these services within the ensuing year.

40. Certain of Allsup's more significant carrier clients, which have experienced the enhanced results provided by Allsup's new methodology in pilot programs, have either indicated their desire to or are in the process of expanding the program to substantially all of their LTD claim base.

41. Further, one of Allsup's more significant client companies has indicated that the effectiveness of Allsup's new methodology has caused it to make further reserve adjustments (i.e., to further reduce the reserve allocated by such LTD carrier to cover future payouts on insured individuals, beyond those adjustments normally made when an individual is simply awarded SSDI).

42. Attached to this Affidavit is the Declaration of Mr. Barry Wolfson. Mr. Wolfson is familiar with all aspects of the long-term disability industry.

(Wolfson Decl. ¶ 3). Mr. Wolfson was employed by Aetna from December 20, 1965 to December 20, 2002. (Wolfson Decl. ¶ 4). For approximately 10 years during his career at Aetna, Mr. Wolfson was involved in the recovery of SSDI overpayments. (Wolfson Decl. ¶ 6). Mr. Wolfson confirmed the problems associated with recovery of overpayments that existed in the industry prior to the instant invention. (Wolfson Decl. ¶ 7). Mr. Wolfson confirmed that there was a long-felt need in the industry for a process of recovering the overpaid amounts after the insured received the SSDI benefit but before the insured disposed of the money. (Wolfson Decl. ¶ 8). Mr. Wolfson became familiar with the claimed invention in late 1999 or early 2000 when Aetna retained Allsup to provide overpayment recovery services. (Wolfson Decl. ¶ 9). With the claimed system, Aetna realized an increase in dollar amounts collected and a decrease in the time from the award of the SSDI benefit to the recovery of the overpaid amount. (Wolfson Decl. ¶ 10). In his opinion, the claimed automated overpayment recovery system dramatically improves the ability of private insurance carriers to collect overpaid monies owed to them. (Wolfson Decl. ¶ 11). Mr. Wolfson believes that the claimed automated overpayment recovery system met a long felt need in the industry for increasing the amount of money recovered and decreasing the time of recovery. (Wolfson Decl. ¶ 12).

43. In my opinion, the commercial success of my electronic overpayment recovery service is primarily attributable to the fact that (a) the individual signed preauthorization allows for electronic recovery of a predetermined overpayment amount from an approved designated account

before the recipient takes "ownership" of the funds; (b) the service results in an increase in the amount of money recovered; (c) the service decreases the average days to recovery and (d) the service increases LTD carrier or self-insured employer overpayment recovery rates.

44. Allsup is the only company authorized to use my overpayment recovery system. However, I believe that there are at least two competitors who have tried to copy our system. I was made aware of these competitors when a major LTD Insurance carrier informed Allsup that other companies had expressed an interest in providing the same services that Allsup is providing. It is my opinion and belief these competitors acquired proprietary Allsup documents that detail the electronic overpayment recovery service.

45. In summary, my "electronic" overpayment recovery method, as deployed through Allsup, successfully addresses significant obstacles previously encountered in the recovery of overpayments effectively and efficiently, and benefits Allsup's LTD carrier and self-insured employer customer base, as well as the disabled individual by, among other things:

- a. Clearly and continually informing referred individuals of their obligation to repay any overpayment;
- b. Addressing this issue at the outset of the SSA application process and, more importantly, by obtaining the documentation and authorization necessary to effect such recovery before the individual's SSDI claim has ever been submitted. Because the individual pre-authorizes Allsup to recover the overpayment before the retroactive SSDI award has

been produced, the individual does not attain "mental ownership" of the award when it does occur. As a result, the actual ACH transaction and successful overpayment recovery becomes the expected result, rather than an additional, subsequent issue, (i.e., an additional, subsequent collection matter/cost) for the LTD carrier or self-insured employer;

- c. Effectively utilizing the positive relationship between Allsup and the disabled individual, created as a result of Allsup's successful SSDI representation services;
- d. Dramatically increasing the rate of recovery and reducing the time it takes to effect the same, so that overpayment monies can be put back into productive general corporate use, sooner, by LTD carriers and self-insured employers;
- e. Providing such LTD carriers and self-insured employers the opportunity to reduce the amount of on-going LTD payments to individuals who obtain SSDI, and thus the reserves associated therewith, as well as the potential for further significant reserve adjustments; and

f. Providing disabled individuals with a convenient and easy way to
comply with their contractual obligations to repay the overpayment.

Further deponent sayeth not.

James F. Allsup
James F. Allsup

Sworn and subscribed to before me this 26th day of FEB 2003

2003.

Cynthia M. Gamerdinger
Notary Public

My Commission expires: 8/7/04

